

August 19, 2003
DECISION AND ORDER

OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: KCBS-TV

Date of Filing: March 14, 2003

Case Number: TFA-0021

On March 14, 2003, KCBS-TV (KCBS) filed an Appeal from a determination issued to them on February 13, 2003, by the FOIA/Privacy Act Group of the Department of Energy (DOE/HQ) in response to a request for documents that KCBS submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that DOE/HQ perform an additional search for responsive material.

I. Background

On June 10, 2002, KCBS filed a FOIA request with DOE/HQ for a copy of all documents regarding missing, unaccounted for, and/or stolen radioactive material, special nuclear material, irradiated material and/or spent fuel. Letter from KCBS to Director, Office of Hearings and Appeals (OHA) (March 26, 2003) (Appeal). KCBS requested a fee waiver because the material was not for commercial use, but rather for use in its mission of gathering and reporting the news. *Id.* DOE/HQ informed KCBS that it had forwarded its request to the Office of Security Affairs and that office had advised DOE/HQ that other DOE organizations were more reasonably expected to possess responsive material. Letter from DOE/HQ to KCBS-TV (February 13, 2003). DOE/HQ then re-assigned the request to those offices. *Id.* The Office of Health, Environment and Safety (DOE/EH) located responsive material, and sent that information to KCBS in its entirety and at no cost. *Id.* The National Nuclear Security Administration (NNSA) also searched its files, but found no responsive material. *Id.* In this Appeal, KCBS asks OHA to direct DOE/HQ to search again for additional information regarding missing radioactive material.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency

search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Milner*, 17 DOE ¶ 80,102 (1988).

This office first contacted KCBS to determine why they felt that the search conducted by NNSA was inadequate. KCBS admitted that they did not have any information indicating that other records existed. Memorandum of Telephone Conversation between Warren M. Gray, OHA, and Nicole Ullerich, KCBS (March 27, 2003). We then contacted DOE/HQ for information regarding the search conducted in response to KCBS’ request. *See* Electronic Mail Message from Valerie Vance Adeyeye, OHA, to Joan Ogbazghi, DOE/HQ (May 30, 2003). DOE/HQ informed us that they had made inquiries to NNSA, DOE/EH, DOE’s Oakland Operations Office (Oakland), DOE’s Albuquerque Operations Office (DOE/AL) and the Office of Plutonium, Uranium and Special Materials Inventory (DOE/SO). *Id.*

DOE/HQ first assigned the request to DOE/SO. Electronic mail message from Joan Ogbazghi, DOE/HQ to Valerie Vance Adeyeye, OHA (June 16, 2003). DOE/SO asked that the requester provide a clear description of the subject matter of the request. *Id.* Upon receipt of an email from the requester, DOE/SO notified DOE/HQ that DOE/SO had no responsive records. *Id.* DOE/SO suggested that responsive material might be found at Stanford University, Los Alamos National Laboratory, NNSA, or DOE/EH. *Id.* NNSA conducted a search and on September 30, 2002, verified that no responsive records were located. *Id.* Oakland stated that, based on the description of the information sought, its office did not have any responsive documents and that there was no database of responsive material at Stanford or Lawrence Livermore National Laboratory (LLNL). *Id.*; Electronic mail message from Roseann Pelzner, Oakland to Valerie Vance Adeyeye, OHA (July 2, 2003). DOE/EH located responsive material and forwarded the documents to DOE/HQ on November 20, 2002. Electronic mail message from Joan Ogbazghi, DOE/HQ to Valerie Vance Adeyeye, OHA (June 16, 2003). DOE/HQ sent the responsive material to the requester. DOE/AL reported that there was no database of responsive material at Los Alamos, but mentioned that “Mr. Newton” at DOE/HQ may have some responsive records. Electronic mail message from Terry Apodaca, DOE/AL to Valerie Vance Adeyeye, OHA (July 2, 2003). John Newton of NNSA found no responsive records. Electronic mail message from Joan Ogbazghi, DOE/HQ, to Valerie Vance Adeyeye, OHA (June 16, 2003).

Based on our analysis of the search as explained above, we find that DOE/HQ has conducted an adequate search for responsive material. Accordingly, this Appeal should be denied.

It Is Therefore Ordered That:

(1) The Freedom of Information Act Appeal filed by KCBS-TV on March 14, 2003, OHA Case Number TFA-0021, is hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: August 19, 2003